

### Scenarios for Discussion:

1. A defendant is ordered to complete community service as a part of her sentence. The defendant provides proof of community service. However, the information is misplaced and a warrant is erroneously issued for failure to comply with the terms of probation. The defendant is arrested, spends the night in jail, and has her car impounded.

Answer: This is the most common claim that we see in the state court system. State Risk Management has typically admitted liability in these situations and reimbursed a defendant for the direct costs of the error. The state occasionally pays for the time spent in jail. If an individual would have been arrested any way (e.g. there is another warrant or an arrestable offense) the state will not pay.

2. In a small claims case, a writ of garnishment is issued against a defendant's bank account. The bank account consists of funds received from the Social Security Administration for the defendant's disability. After the funds are garnished, the defendant sues the court clerk for "wrongfully" issuing a garnishment.

Answer: A court clerk is not liable in this situation and neither is the court itself. At this stage, a court has no way of determining whether funds are exempt. It is the defendant's obligation to raise that issue in a garnishment hearing (and could waive it) and the court is not otherwise liable.

3. A man comes to court and hands the clerk a note stating that he is hearing impaired, but would like to observe court proceedings and requests a sign language interpreter. The clerk says that she is sorry, but the court does not provide that service.

Answer: If a hearing impaired individual provides sufficient advance notice, a court is required to provide a sign language interpreter. Just as other members of the public may attend court proceedings - because they are public - the court is required to provide similar accommodations for a hearing impaired individual. However, the court is not required to have a sign language interpreter immediately available and could tell the individual to come back in a day or two to give the court time to locate such an interpreter.

4. While on the way to the bank to deposit court funds, the clerk runs through a stop sign, causing a three-car traffic accident.

Answer: The government entity that employs the clerk will probably be liable in this situation. The accident occurs during the course of the clerk's employment and therefore the employer is responsible. The court clerk is most likely not personally liable as long as the errand was part of the clerk's job duties.

5. Several employees are passing around a birthday card for another employee. The birthday card has a picture of a man in a Speedo swimsuit. Another employee, who is not the recipient of the card, sees the card and files suit for sexual harassment.

Answer: This situation most likely does not constitute actionable sexual harassment. However, if the employee complained and a similar incident occurred in the future, this would probably be actionable sexual harassment for which a government entity could be liable. An individual employee is typically not personally liable for the sexual harassment (although it is possible under certain circumstances) although the employee would usually be fired. Even if this is not sexual harassment it is poor judgment.

6. A Hispanic person comes to the court to pay a fine. The court clerk helps two other people, who arrived after the Hispanic person, before helping the Hispanic person with the fine.

Answer: If the Hispanic individual were able to show that he or she was discriminated against based on his or her ethnicity, the employing government entity would be liable. It would be difficult to prove discrimination under these facts, unless it was apparent that the court clerk deliberately ignored the Hispanic individual.

7. A defendant comes into court to discuss a drug paraphernalia charge. The court clerk recommends that the defendant hire a particular attorney. The defendant hires the attorney, but the attorney fails to win an acquittal for the client. The attorney was extremely unprepared for trial. The defendant sues the court clerk for giving a bad recommendation.

Answer: It is unethical for a clerk to recommend an attorney to an individual. However, simply because an action is unethical does not mean that it creates liability. This situation would most likely not create any liability for the court system. An individual almost always hires an individual at his or her own risk.

8. A neighbor of a court clerk is discussing a problem that the neighbor is having with another neighbor's dog. The court clerk suggests filing a lawsuit against the neighbor for damages caused by the dog. The neighbor sues the dog owner, but a counter-claim is filed and the neighbor ends-up owing the dog owner money. The neighbor sues the court clerk for wrongfully giving legal advice.

Answer: This question is similar to question number 7. It is unethical for the court clerk to give legal advice in this situation. However, the simple fact that legal advice was given is not sufficient to create liability.

9. A confrontationalist comes to the court counter and begins asking questions of the court employees. After a dozen questions, the court employees discover that the confrontationalist is tape recording the conversation. The employees have a law enforcement officer confiscate the tape and the confrontationalist files a law suit.

Answer: It is not illegal for an individual to tape record a conversation with a court employee. There is therefore no basis to confiscate the tape and this may create liability.

However, it would be very difficult for an individual to identify specific damages in this situation. A court employee is not required to answer questions if the conversation will be recorded.

10. A defendant comes to the court and asks for a copy of his drivers license history that was filed with the court. The request is denied and the defendant files suit.

Answer: If the court clerk intentionally denied the request, knowing that the defendant was entitled to the drivers license history, then a criminal action can be filed against the court clerk. However, this does not automatically create civil liability.

11. A court clerk becomes aware that her friend is dating a man with several domestic violence convictions. Concerned for her friend's safety, the court clerk tells the friend about the boyfriend. The couple splits-up and the boyfriend sues the court clerk.

Answer: This scenario again presents a situation in which it is probably unethical for the court clerk to share this information. However, the information is public and therefore sharing the information does not create liability. If the shared information were not true, then this might create liability.